

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HANSEN BEVERAGE COMPANY, a
Delaware corporation,

Plaintiff,

vs.

INNOVATION VENTURES, LLC dba
LIVING ESSENTIALS, a Michigan
corporation,

Defendant.

CASE NO. 08-CV-1166-IEG (POR)

**ORDER DENYING PLAINTIFF'S
EX PARTE MOTION FOR A
LIMITED STAY**

[Doc. No. 174]

Presently before the Court is Hansen Beverage Company's ("Hansen") ex parte motion for a limited stay. (Doc. No. 174.) Defendant and counter-claimant Innovation Ventures, LLC dba Living Essentials ("Living Essentials") filed an opposition, and Hansen filed a reply. For the reasons stated herein, the Court denies the motion.

DISCUSSION

On December 23, 2009, the Court issued an order granting in part and denying in part Hansen's motion to dismiss Living Essential's amended counterclaim. (Doc. No. 166.) On January 4, 2010, Hansen filed a motion for certificate of interlocutory appeal of the Court's ruling that the Food Drug and Cosmetic Act does not preempt Living Essential's amended counterclaim. Hearing on the motion is set for February 1, 2010 at 10:30 a.m.

At the same time, Hansen filed the ex parte motion requesting that the Court stay the effect

1 of its December 22, 2009 Order until the Court determines whether to grant Hansen's motion for
2 certification. (Doc. No. 174.) Living Essentials argues that the fact discovery and initial expert
3 report deadline is February 9, 2010, and a stay would further delay discovery relating to Living
4 Essentials' counterclaims and unclean hands affirmative defense.

5 **CONCLUSION**

6 Upon consideration of the parties' arguments, the Court hereby DENIES Hansen's ex parte
7 motion for a limited stay. The Court further ORDERS that it will take Hansen's motion for
8 certification under submission pursuant to Civil Local Rule 7.1(d)(1). No oral argument will be
9 required.

10 **IT IS SO ORDERED.**

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12 **DATED: January 19, 2010**


13 IRMA E. GONZALEZ, Chief Judge
14 United States District Court

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